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Brf. of Atty. Gen.l (Richards) for Petitioner.

Filed May 5, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

G. A. MORRISON & SON, APPELLANTS,
v.
THE UNITED STATES.
} No. 656

APPLICATION FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

G. A. MORRISON & SON, APPELLANTS,
v.
THE UNITED STATES.
No.

APPLICATION FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The Solicitor-General, on behalf of the United States, respectfully prays for a writ of certiorari to require the above-entitled cause to be certified to this court for review and determination, pursuant to the provisions of section 6 of the act entitled "An act to establish circuit courts of appeals," etc., approved March 3, 1891. This cause and the case of *H. Wolff & Co.* v. *United States*, in which a similar application is submitted, arose under the customs administrative act of June 10, 1890, protests or notices of dissatisfaction having been filed by the importers with the collector of customs for the collection district and port of New York. The Board of General Appraisers sustained the collector, and on petition to review their decision, it was affirmed by the circuit court as to the articles now in question. An appeal was taken by the importers, which resulted in a reversal

of the decision of the circuit court by the circuit court of appeals. The cases were tried together substantially upon the same record.

The question to be decided is as to the proper classification for duty, under the tariff act of October 1, 1890, of strung glass beads, made in imitation of jewels. The question is of importance pecuniarily. The Secretary of the Treasury, in requesting that the matter be carried to this court, states that the issue is of the utmost importance, and that the amount involved in this and similar cases and in pending protests is approximately $315,000.

STATEMENT OF FACTS.

These cases involve certain importations, made in 1891, 1893, and 1894, of glass strung beads, which were imitations of pearls, cat's-eyes, and various other precious stones, none exceeding one inch in dimension. They were classified by the collector under paragraph 108 of the act of 1890 as "manufactures of glass * * * not specially provided for in this act, 60 per cent ad valorem." The importers claimed that they were dutiable at 10 per cent ad valorem under paragraph 454, as "imitations of precious stones, composed of paste or glass, not exceeding one inch in dimensions, not set."

Some of the importers' witnesses testified that the articles were known commercially as beads prior to 1890 as well as since, and sometimes as jewels, being used "for trimming purposes to imitate precious stones" (Record, Morrison case, p. 9; and see stipulation in record of Wolff case, p. 7); but that, while they were variously known as jewels or imitation jewels, jewel trimmings, imitation

pearls, etc., the use of such names did not "take anything away from their character as beads" (p. 19). One of the witnesses for the Government, who was an importer of beads, testified that he was familiar with the class of articles known commercially as imitations of precious stones, but that he had never known them to have holes in them or through them (p. 41). This witness, with the other witnesses for the Government, identified the exhibits in the case as beads—wax beads and pearl beads.

The weight of evidence shows the articles to have been known, popularly and commercially, as beads. The only paragraph relating to beads in the act of 1890 (par. 445) provides for "glass beads, loose, unthreaded, or unstrung." Strung beads are not specially provided for, and the beads in question must therefore fall under the provisions of one of the only two paragraphs which can be found to describe them generally, namely, paragraph 108 and paragraph 454.

The record shows (Record, Morrison case, pp. 4, 5, 9, 10, 12, 15, 21, 34, 35, 40, 44; and see stipulation in record of Wolff case, p. 7) and the circuit court of appeals find in their opinion (84 Fed. Rep., p. 444) that the respective similar importations in the two cases involved consisted in the one case of glass strung beads not exceeding 1 inch in dimensions, which have been long commercially known as "beads," and that they were imitations of precious stones popularly styled jewel stones or jewels, and that in the other case they were also glass strung beads under an inch in dimension, which were imitation pearls known as pearl beads or wax or Roman beads, and were used, respectively, in the millinery trade for

trimming and for necklaces and trimming. The question really is whether the known commercial designation determines the classification, or a specific provision *eo nomine*, by which they were also known, though this was not their commercial designation.

The circuit court (77 Fed. Rep., 605) found that the strung beads first referred to were manufactures of glass not specially provided for, although they were imitations of precious stones, and that imitations of precious stones not set are by implication imitations capable of being set, which these beads were not; also that the wax or Roman beads, although imitations of pearls, were not composed of glass or paste, but glass and wax, and did not therefore fall within paragraph 454, which provides for imitations of precious stones composed of glass or paste.

The circuit court of appeals, in reversing the decision of the circuit court, found, however, that although the suggestion is natural that the beads of the first class were to be used exclusively for trimming hats or apparel, and were not to be set into ornaments of the person, there can be no practical tariff distinction between imitations of precious stones unset which are to be set into articles of jewelry, and such imitations which are to be used as ornaments upon hats or apparel.

The reason for holding that the decision of the circuit court of appeals is erroneous and for seeking a review of it are as follows:

First. As the importations of these classes of beads strung were specially intended for use in trimming ladies' wearing apparel and were not adapted for setting in the manufacture of jewelry, to which use imitations of

precious stones are generally put, they can not be considered imitations of precious stones not set, inasmuch as that designation in paragraph 454 necessarily implies that the imitations of precious stones contemplated are such as are capable of being set, and are ordinarily and chiefly or generally used for that purpose. Therefore this merchandise is specially provided for in paragraph 108 and the duty was properly assessed by the collector and determined by the circuit court.

Second. As the remaining portion of the merchandise consisted of flat pieces of glass drilled for stringing, and as there is no special provision for "glass strung beads," and the evidence shows that these beads were intended for trimming or ornamenting hats and wearing apparel, they are not, therefore, imitations of precious stones, but are properly dutiable as manufactures of glass as assessed.

Third. The further reason for granting the application in this case is that the question is a continuing one and is not restricted to the act of 1890. The same or similar questions have arisen under the cognate provisions of the act of 1894 (28 Stats., par. 99, p. 514; par. 102, ibid.; par. 338, p. 534) and of the act of 1897 (pars. 112, 408, and 435).

A certified copy of the entire record of the case in the circuit court of appeals, including its opinion, is filed as part of this application.

It is respectfully submitted that a writ of certiorari should be granted as hereinbefore prayed.

JOHN K. RICHARDS,
Solicitor-General.

No. 657, 1897.

FILED
MAY 5 1898
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Brief of Atty. Gen'l (Richard)
for Petitioner.

Filed May 5, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

H. WOLFF & CO., APPELLANTS,
v.
THE UNITED STATES.
} No. 657

APPLICATION FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

H. WOLFF & CO., APPELLANTS,
v.
THE UNITED STATES.
No.

APPLICATION FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The Solicitor-General, on behalf of the United States, respectfully prays for a writ of certiorari, to require the above-entitled cause to be certified to this court for review and determination, pursuant to the provisions of section 6 of the act entitled "An act to establish circuit courts of appeals," etc., approved March 3, 1891.

This case is similar in every respect to that of *G. A. Morrison & Sons, appellants,* v. *The United States,* in which an application has been submitted for certiorari. In fact the two cases were tried together in the lower court. It is unnecessary to state the facts and reasons in support of the application, as they are set forth fully in the application in the Morrison case.

JOHN K. RICHARDS,
Solicitor-General.

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